IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE D.S.R.VARMA

WRIT PETITION NO : 6392 of 2005

Between:

1 Syed Dasthagiri Basha Quadri, S/o S.S. Quadri,
R/o Gajwel, Medak District.
2 B. Bixpathi, s/o B. Ramaiah, Hindu,
R/o Gajwel, Medak District.
3 Mohd. Alimuddin, s/o Maqdoom Mohiddin,
R/o Gajwel, Medak District.

..... PETITIONERS

AND

1 The Sale Officer, District Cooperative Central Bank Ltd,
Sangareddy Branch, Gajwel, Medak District.
2 The Manager, District Cooperative Central Bank Ltd,
Gajwel, Medak District.
3 The General Manager, District Cooperative Central Bank Ltd,
Sangareddy, Medak District.
4 The Paid-Secretary, Primary Agricultural Cooperative Society,
Gajwel, Medak District.
5 Y. Janardhan Reddy, S/o Bhoomi Reddy,
6 Y. Bhoomi Reddy, S/o Laxma Reddy,
7 Y. Narsa Reddy, S/o Bhoomi Reddy,
8 Y. Indra Reddy, S/o Bhoomi Reddy,
(Respondents 5 to 8 are R/o H.No. 3-85 and 3-86, Gajwel,

Medak District).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of writ of mandamus declaring the impugned sale notice dated
10-3-2005 issued by the respondent No.1 the sale officer proposing to sell Item No.4 of the schedule lands in the sale notice as illegal, arbitrary, unconstitutional and violative of principles of natural justice as the petitioners are *bona fide* purchasers and consequently direct the respondents by deleting the petitioners' schedule lands

of an extent of Ac.7.27 gts covering Sy.Nos. 819/A to 827/A of Gajwel Village an Mandal in E.P.No. 1721/2001-02004 by duly considering the claim objection of the petitioners in the interest of justice and to pass such other orders.

Counsel for the Petitioners: MR.M.JANARDHAN RAO

Counsel for the Respondent Nos.1 to 3: Smt.B.Vijayalakshmi

Counsel for the Respondent No.4: G.P. for Cooperation

Counsel for the Respondent Nos.5 to 8: None appeared

The Court at the stage of admission made the following

ORAL ORDER:

Heard both sides.

2. The grievance of the petitioners is that the properties, which are being brought to sale, were originally belonging to the loanees, which were subsequently purchased by them.

3. The undisputed facts are that the original loanees, who are parties to the present writ petition, were declared as defaulters and the properties were brought to sale after completing the formalities prescribed under the Co-operative Societies Act, 1964. At that stage, the petitioners claim that some of the properties, which were not mortgaged to the bank, are also being put to sale and when an application was made by the petitioners to the bank dealing with such properties, the same was not received. Hence, the present writ petition.

4. The learned counsel appearing for the respondent-bank submits that the original loanees i.e., respondents 5 to 8 kept the documents under registered mortgage with the bank and remained as defaulters. Hence, the properties are being brought to sale.

5. In other words, it is the contention of the learned counsel for the respondents-loanees that the bank is a secured creditor and there is absolutely no controversy on this aspect. When the properties were mortgaged and the documents are in the custody of the bank in lieu of the loan amounts, the bank being a secured creditor has a first charge over and above all the creditors.

6. Whether the procedure prescribed under Rule 52 (21) of the Andhra Pradesh Co-

operative Societies Rules, 1964, is totally a different matter altogether, perhaps, may also be looked into by the bank itself and the applicability thereof.

7. In my considered view, it is only a matter of verification as to whether the properties that are being brought to sale and the properties belonging to the petitioners are different.

The bank, of course, cannot proceed against such of those properties, which are not mortgaged to it. But, as already noticed that properties, which were in the custody of the bank by way of registered mortgage can be proceeded with by the bank, in accordance with law and naturally the petitioners cannot have any claim over such properties.

8. With the above clarifications and observations, the writ petition is disposed of, at the stage of admission, with a direction to the respondent-bank to verify as to the contents of the application said to have been made by the petitioners and proceed in accordance with law. If no such application is available on record with the bank, the petitioners are at liberty to file such an application, within two weeks from today and upon such application being filed before the respondent-bank, the same shall be considered, in accordance with law. No costs.

D.S.R. VARMA, J

28th March, 2005

Note:

Issue CC in three days

(B/o.)

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ASSISTANT REGISTRAR

To

1. The Sale Officer, District Cooperative Central Bank Ltd,

   Sangareddy Branch, Gajwel, Medak District.

2. The Manager, District Cooperative Central Bank Ltd,
Gajwel, Medak District.
3. The General Manager, District Cooperative Central Bank Ltd,
Sangareddy, Medak District.
4 The Paid-Secretary, Primary Agricultural Cooperative Society,
Gajwel, Medak District.
5. Two CCs to G.P. for Cooperation, High Court Buildings, Hyderabad (OUT).
6. Two CD copies.